IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 551 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

MANSUKHLAL CHHAGANLAL

Appearance:

1. Criminal Appeal No. 551 of 1987

MR Asim Pandya for Mr D N Patel for Petitioner No. 1

MR Kartik Pandya for Mr VIJAY H PATEL for Respondent No. 1

Non appears for Respondents No. 2-3

MR B D Desai, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/02/2002

ORAL JUDGEMENT

This is an appeal filed by Mr V S Upadhyay, Custom Superintendent, Bulsar under section 378 of the

Code of Criminal Procedure, 1973 (for short, 'the Code'). challenging the judgment and acquittal order dated 30.8.1986 recorded by the learned Addl. Chief Judicial Magistrate, Valsad in criminal case No.39/84. under which the learned Magistrate acquitted respondents no.1 to 3 from the offences punishable under section 135 of the Customs Act, 1962.

2. It was alleged against the aforesaid respondents before the trial court that on receiving information that smuggling goods were kept in an agricultural field, an enquiry was made on 10.1.1983 by the Customs Officers and some packets were seized. On verifying the said bundles, it was noticed that the said bundles contained foreign fabrics. It was alleged that the said foreign fabrics were imported without payment of customs duty and, therefore, the prosecution was launched against four accused persons. At the end of the trial, one accused was convicted for the offence in question, whereas present respondents No.1 to 3 were acquitted.

3. Feeling aggrieved by the said judgment and acquittal order of the trial court, the petitioner herein has filed this appeal as an acquittal appeal. It has been contended here that the trial court has not properly appreciated the evidence and, therefore, this Court should re-appreciate the same and hold respondents no.1 to 3 guilty and punish them according to law.

4. The appeal was admitted and it was placed for hearing. At the hearing Mr Asim Pandya appears for Mr D N Patel, learned advocate for the appellants whereas Mr Kartik Pandya, learned Advocate appears for respondent no.1 and Mr B D Desai, learned APP appears for respondent no.4-State. None appears for respondents no.2 and 3. At the commencement of hearing, a preliminary question raised was whether the appeal filed by the petitioner is maintainable ? An attempt was made to argue that in private complaint, some sort of investigation was undertaken and, therefore, the complaint filed by the present petitioner should be construed as a charge sheet and, therefore, the present petitioner should be at liberty to file acquittal appeal against the judgment and acquittal order of the trial court.

5. On this point, we find that there is a decision of the Division Bench of this Court in the case of Linder Frank Wolfgang v. Union of India & Ors., reported in 2000(2) GLH 310. There the appeal was filed under section 377 (2) of the said Code and it was observed by this court that there is no separate machinery provided

under the Customs Act to investigate into crimes bypassing the provisions of the said Code. It is further observed that the enquiry conducted by the Customs Officer under the Act cannot be treated to be an investigation conducted by an Agency authorised under the Act. That therefore, the appeal against inadequacy of sentence is not maintainable at the instance of Central Government. Same way, this is an appeal against acquittal and the provision made for acquital appeal under section 378 of the said Code is not different from the provision made in section 377 of the Code. Therefore, applying the analogy, it would be apparent that there was no charge sheet filed against the contesting respondent and, therefore, this being a case initiated on a private complaint, acquittal appeal could not be filed by the Union of India through the present appellant. Since the acquittal appeal has been filed, it is not open to this Court to entertain the said appeal and it was not open to the appellant to file acquittal appeal against the judgment and acquittal order in question. I respectfully follow the decision recorded by this Court in the aforesaid case (2002(2) GLH 310) (supra) and hold that in view of the principles enunciated in the aforesaid matter, acquittal appeal at the instance of the appellant herein, is not maintainable against the judgment and acquittal order passed by the learned Magistrate. When the appeal itself is not maintainable, there is no need to go into the factual aspects of the case.

For the foregoing reasons, this appeal is not maintainable and, therefore, it deserves to be dismissed. In above view of the matter, this appeal is ordered to be dismissed.

21.2.2002 [D P Buch, J.]
msp